

The petitioner entered in the service of the respondent Rajasthan State Co-operative Spinning & Ginning Mills Federation, Unit Gangapur, being appointed as a workman at the consolidated salary of Rs.200/- per month by order dated 24.1.1986. The petitioner was instructed to work in stores of the

respondent establishment in place of Shri Vijay Jaiswal, who was working as store clerk.

It is contended by the petitioner that from the date he was posted in stores under the order dated 24.1.1986, he is discharging duties of Lower Division Clerk but the respondent is treating him as a store boy and making the payment accordingly. It is also contended by the petitioner that though Laxman Bhambhani, Banwarilal and Rejendra Kumar were appointed in the respondent establishment subsequent to him but they were accorded regular pay scale of Lower Division Clerk with effect from 1.12.1988, 1.10.1989 and 1.10.1990 respectively. The petitioner on the basis of principle of equal pay for equal work claimed for grant of regular pay scale to him pertaining to the post of Lower Division Clerk w.e.f. 24.1.1986 or atleast from the date the same was given to Shri Laxman Bhambhani, Banwarilal and Rajendra Kumar. An additional affidavit is also filed by the petitioner stating therein that besides the above named three persons, respondent has allowed regular pay scale applicable to the post of Lower Division Clerk to 27 persons and those 27 persons were junior to him as daily rated employees. Alongwith the affidavit the petitioner also placed on record a statement to substantiate the contention above. From the perusal of the statement it appears that except Chandratan whose name appear at S.No.2 all other

persons were appointed quite subsequent to the petitioner as daily rated employees.

A reply to the writ petition has been filed on behalf of the respondent establishment stating therein that the appointment was given to the petitioner on consolidated salary as store boy and not as Lower Division Clerk, therefore, he is not entitled for the pay scale allowed to Lower Division Clerks.

Heard counsel for the parties and also perused the record.

Though the respondent stated in reply to the writ petition that appointment to the petitioner was given as store boy but nowhere it is controverted by the respondent that they utilised services of the petitioner as a Lower Division Clerk.

Certain important facts are required to be noticed on basis of which it can be established that the respondent utilised services of the petitioner as a clerk. By an order dated 24.1.1986 the petitioner was posted in stores in place of Shri Vijay Jaiswal. Shri Vijay Jaiswal was working as clerk in the stores. The assignment of the duties in store in place of Shri Vijay Jaiswal is a fact important to settle the issue with regard to the post on which the respondent utilised petitioner's services.

Another important aspect of the matter is that the respondent by a communication dated 15.6.1988 conveyed to the petitioner that at the relevant time no post of Lower Division Clerk was available, therefore, the pay scale pertaining to the post of Store Boy was allowed to him. A valid presumption can be drawn on basis of the document aforesaid that the respondent was utilising services of the petitioner as clerk but the pay scale was not given to him due to non-availability of the vacancy. It is also a factor relevant to be considered that the petitioner by an additional affidavit stated that atleast 26 persons junior to him were allowed the pay scale pertaining to the post of Lower Division Clerk but the same was accorded to him. The facts stated in additional affidavit are not controverted by the respondent.

In view of whatever discussed above I am having no hesitation in saying that the facts available on record proves that the respondent utilised services of the petitioner as Lower Division Clerk. The respondent also allowed the pay scale pertaining to the post of Lower Division Clerk to number of persons junior than the petitioner. The Article 39(d) read with Article 14 of the Constitution of India put an embargo on the respondent to make the payment of salary to the petitioner workman on basis of principles of equal pay for equal work. The

respondent, therefore, is required to make the payment of salary to the petitioner in the pay scale pertaining to the post of Lower Division Clerk atleast from the date the persons junior to him were given the pay scale concerned.

Accordingly, the writ petition is allowed. The respondent is directed to allow the pay scale of Lower Division Clerk to the petitioner from the date the same was given to his juniors. The fixation of the petitioner in the pay scale pertaining to the post of Lower Division Clerk shall be made on notional basis and the actual benefits be given to him henceforth.

(GOVIND MATHUR),J.

kkm/ps .